PLANNING COMMISSION MINUTES

October 13, 1999

CALL TO ORDER — Chairman Maks called the meeting to order at 7:00 P.M. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: — Present were Chairman Dan Maks; Planning Commissioners Charles Heckman, Sharon Dunham, Vlad Voytilla, Eric Johansen, Don Kirby and Tom Wolch.

Staff was represented by Senior Planner Steven Sparks, Transportation Planner Margaret Middleton, City Assistant Attorney Ted Naemura, and Recording Secretary Cheryl Gonzales.

Chairman Maks opened the public hearing and read the format for the meeting. There were no disqualifications of Planning Commission members.

OLD BUSINESS:

CONTINUANCE:

A. TA99-00009 UTILITY UNDERGROUNDING TEXT AMENDMENT

(Continued from September 8, 1999)

This City-initiated proposal would, if approved, amend the Development Code to allow the collection of "in-lieu" fees as an alternative to placing utilities underground as currently required by the Development Code. The proposed text amendment would add a new section to Chapter 60 and amend several sections within Chapter 40 of the Development Code. Additional amendments to Ordinance 2050 text may be necessary in order to assure internal consistency with the proposed text amendments.

The staff report was given by Steven Sparks, assisted by Laura Jackson, Consultant from W & H Pacific. This item was last addressed by the Commission on September 8, 1999. At that time, there were four main items to look at and bring back for consideration.

Mr. Sparks stated the first item concerned the negotiations on page 4 of 9 of the proposed text. Originally, it had been proposed that if the undergrounding fee represented in excess of 25% of the total estimated construction cost of the total development, they could be flexible and negotiate the payment of that fee. Historically they had waived fees or had created some sort of negotiations based on certain valuations of projects. However, Mr. Sparks stated their research had resulted in an average figure of 15% of development costs, so it was reduced to that percentage.

A second concern was the City establishing priorities for utility undergrounding. On page 3 and 4 of 9, staff suggested methods of identifying priorities.

Two other items which staff felt to be inappropriate to address in this particular forum, were first: the fees which would be charged in the in lieu program. The fees would be established by City Council. If the Commission desired to review those fees, a work session could be scheduled. The second item that staff did not address were issues of right-of-way management, examples being prioritizing all undergrounding; oversizing of conduits for future undergrounding projects, etc., as development occurs. Likewise, if the Commission desired to discuss these issues, a work session could be scheduled.

Mr. Sparks made two corrections to the staff report and proposed text. In the staff report, the dates of September 15 and 13 should be replaced in every instance with the date September 8. The other amendment was on page 2 of 9, at the bottom, three sentences that had started off being struck, need to capitalized. The words, "the" and "that" needed to be capitalized.

Chairman Maks asked that Mr. Sparks give a brief synopsis of why this text amendment was being done, what the present policy was, etc. This was to inform the public who were present at this meeting.

Mr. Sparks explained that this project was to establish a program by which developers, property owners, may provide a fee in lieu of undergrounding utilities which would be required as a part of land divisions, partitions, subdivisions and design review. Presently, there was no mechanism to provide an in lieu fee or waive fees. This has been done on a case-by-case basis, negotiating with people as they would come in. However, the City did not have any code standard by which to make those arrangements. There was some loose language, a few words, either in the Development Code or City Code which gave the City Engineer some latitude to negotiate the matter. What staff was trying to do was to establish very clear and concise criteria by which projects would be evaluated to provide an in lieu fee. There would be criteria in the code which would state; if a project met this and that criteria, then a person would be eligible to pay the in lieu fee for undergrounding. It would not be moving away from the existing City policy of requiring undergrounding, it would just provide a different option in certain scenarios.

A certain scenario example: an owner had a 12,000 square foot lot in an R5 zone; owner decided to subdivide and create a second parcel. Instead of undergrounding all the utilities in the street--say three poles, the owner would instead be required to only underground from the pole onto the property the owner was developing. He continued, stating that the City did not have that ability right now, the code stated utilities would be undergrounded. If the City looked at the utility alignment on a certain street where this property was located and it didn't make any sense to drop one pole that may or may not be in front of this property, for the length of a couple hundred feet, in that instance, he stated, one of the

criteria would be met to allow an in lieu fee. However, if the property owner were going to subdivide and create 50 new lots, then there would be more reason, likely due to the scope of the project, to underground the utilities in the area affected. In all likelihood, there would also be road improvements done to accommodate a larger project.

Chairman Maks in continuing with this example, He asked that were he to subdivide his lot and did not want to bury the utilities, who would make the decision that the City was going to charge him a fee? Mr. Sparks answered that that would be an ministerial decision because the criteria that was being proposed in this text were very clear and concise.

Chairman Maks asked, would it be a Type 1 or a Type 2? Mr. Sparks replied that it would essentially be a Type 0. It would be a part of review, like a home occupancy permit where certain criteria need to be met. If they were met, then you'd be free to go. That would be an ministerial decision which would not require notice; would not require a public hearing. It would be just something for the City to evaluate as a project comes in.

Chairman Maks asked where did the 15% kick in and what type of decision would that be? Mr. Sparks answered that that too would be as proposed. It would be an administrative decision with the City Engineer. Chairman Maks added it would have some discretion in it. Mr. Sparks agreed. Chairman Maks questioned if it would be Type 2? Mr. Sparks stated that if he chose to make it a decision that would require notice, and some sort of hearing, then it would be a Type 2 decision. However, he stated that as it was proposed right now, it would also be a Type 0 decision. It would be an administrative decision with discretion, up to the City Engineer.

Chairman Maks questioned then, if it were a Type 1, it would be a planning director's decision. Mr. Sparks agreed this would be correct. Chairman Maks added that notice of the decision would be mailed to people within a 100 feet.

Assistant City Attorney Naemura questioned that it could be that these requirements appear for different applications at different types of review. They could appear in some applications that come through for Type 1. It would almost seem like the Type 0 was flagged because this was being pointed to almost during the preapplication stage. And that staff determination would tend to follow the application as it would get pegged at a type of review and goes through that review.

Chairman Maks to clarify this statement, gave the example, if Joe Developer were to come in and stated that was to cost him 15% additional cost and he wanted a waiving of the fees. Would that be done in the pre-application or Facility Review?

Mr. Sparks stated it would certainly be brought up at the pre-application conference. The plans would be looked at and they would determine that the utilities needed to be undergrounded here. This would be based on the various engineering standards. They would have to go and do it.

As a part of the project review before Facility Review, then through Facility Review, the City would identify any deficiencies in an application; i.e. what would need to be done, here, there or otherwise. At that time, if all things were working properly, yes, it would be made an issue of the application, that an in lieu fee was being requested as a result of this subdivision, or project.

Chairman Maks stated that what counsel was bringing up the item because of it being "YAR", that they (citizen or applicant) could made it an issue if they didn't agree with this. He gave the example of the subdivision, a large number of people came out and #1 they wanted the utilities buried underground now, not later; and/or #2, they did not feel it was fair and/or equitable that a fee was negotiated. The Board of Design Review (BDR) would not be able to do anything if it were part of Facility Review because the BDR cannot change Facility Review conditions, however, the Planning Commission can. That was the reason for bringing this up.

Mr. Sparks stated that he would be unsure of an answer because as Joe Developer would not, in a public forum, want to discuss his financial situation and the scope of the project. There would be proprietary information that might have to be disclosed because of the percentage. He confirmed that the cost of a project should not be the consideration of the merits of a project.

Chairman Maks stated that his question was based on trying to determine where the major decision, the 15%--whether it would be a Type 2, as it would be appealable, but it had minimum other requirements. Type 1, Type 0 were not. With the code review, Type 2 would be a better fit because it had a little bit of discretion in it. That would make it appealable.

Mr. Sparks stated the flip side to this would be to delete the section, remove it. The stance could be taken such that given a situation, the developer\owner would be told to underground and pay the fee. He gave the examples of a traffic fine, the fine was this amount; person came in to submit for a conditional use permit, the amount was "x" dollars.

Chairman Maks, in the instance of an appeal, stated that the trigger was discretion. The concern remained the 15%, why couldn't it be 25%?

Mr. Sparks responded that the section could be substituted with a section that would state, "Negotiations on all total cost of fees was a Type 2 hearing, subject to public notice and review and subsequent appeal."

Chairman Maks then asked for further questions of staff. Commissioner Johansen, regarding Mr. Duggan's research, asked what the range was? Mr. Sparks replied that it ranged from about 3% on the low end to about 50% on the high. To figure the standard deviation on this would require a more robust statistical analysis than what was done. Commissioner Johansen stated that the CIP priority allocation looked good. Chairman

Maks agreed. Commissioner Johansen also stated he supported the concept of the fees being set at a level leaning toward full cost recovery so that the cost would not become a public cost down the road.

Commissioner Heckman asked that the estimated construction costs of the total development be defined. He questioned how an exact figure could be applied to that; also, were those the developer's numbers that would come forward; where would it start; where would it end?

Mr. Sparks answered that the developer, to take advantage of this section, would need to come forward with an estimated cost of the project. It would include preparing the site, the number of nails, the road improvements, whatever it would take to get this property completely developed and people in the houses or commercial facility. That would create a total cost. He added there were tables that they use in the building section of CDD which indicate a cost amount per every 100 square feet for example. These were ways to verify project costs.

Commissioner Heckman, concerning the total estimated construction cost, questioned that it was possible for the undergrounding to cost in the range from 3% to 50%. He added that 50% would then probably represent a very small development and 3% would be a 700 lot development or something similar. Mr. Sparks stated that the biggest project was a $30 million project and it was about 4%. Commissioner Heckman concluded then that it was really a pretty small dollar analysis. Mr. Sparks concurred.

Commissioner Heckman, on page 4 of 9, 60.55.40, stated the last three lines of that section were very unreadable, starting where it reads, "Section 60.55.25., or where ..., or vault per 100 linear feet...". He asked about fiber optic splices laying on the ground or what?

Ms. Jackson answered that that was an issue raised by some of the utility providers. She gave the example of the 12,000 square foot lot that was subdividing that happened to have some kind of very expensive communication equipment currently above ground, that would have to be relocated. Fiber optic, she explained, was something that was not easily movable, cutable and splice-able. So in a situation where there was either very high voltage electric lines, high capacity telephone lines, high capacity cable television lines, etc., the utility providers had asked that the City allow for a negotiation to happen; the issue being full cost recovery. In the case of a small project, it was not fair to burden a small developer or home owner who wanted to build a second unit on a piece of property with a really expensive $10,000.00 or $15,000.00 proposition on some of these cases.

Commissioner Heckman suggested changing the text to read, "fiber optic splice vaults...". Mr. Sparks made the suggestion that the word "where" be added, making it read, "vault per 100 linear feet of improvement or where there are...". That addition was agreed upon.

Commissioner Heckman, on page 2 of 9, asked Mr. Sparks to explain the new number 6, starting with, "The party responsible...". Having read item 6, Mr. Sparks gave the example of having a piece of property where he was going to do a development but did not meet the in lieu fee. He was not going to negotiate but was going to underground the utilities, including the poles that were out in the street. These had existing drops on them, dropping onto other properties. By being the party responsible for have required undergrounding, thereby removing those overhead drops, making them underground drops, he would be the party responsible for providing the underground connections to the neighboring properties who were previously enjoying the air drop from the poles.

Commissioner Heckman stated that any people affected by this undergrounding, the responsibility for reconnecting their power or any other utility, would lie with the developer. Mr. Sparks gave the additional example of the City deciding to underground the utilities on Hart Blvd. as part of that redesign. The City or the County being responsible for triggering that undergrounding would be the responsible party in providing those affected customers with new connections -- assuming there were overhead drops coming off those lines.

Commissioner Dunham, page 5 or 9; 2. B. 3., stated a minimum depth of 100 feet. This needed to be clarified to make the intent more specific referencing the depth of the site. She suggested that this be changed to read, "depth of site", or "within a 100 feet of site", or "property line", etc.

Commissioner Voytilla suggested that at the word, "minimum", insert the following, "...on adjacent properties to a minimum of 100 feet surrounding the subject property boundary." Mr. Sparks indicated that the same change would be needed on the next page, 6 of 9; 3. B. 3., if it was agreeable with the Commission. The Commission agreed to this change.

Commissioner Wolch, page 4 of 9, concerning the prioritization of projects, #3 questioned the distinctions between the accrual of fees, collecting of fees. The text stated that fees had been accrued but they had not yet been collected.

Ms. Jackson answered by explaining that if several properties on street "A" had paid fees, and nobody on street "B" had paid fees, but street "B" complained more, the money then went to improve street "B". It should not be situation of sacrificing street "A"'s already paid money and their expectation.

Chairman Maks added the example of an owner subdividing his lot, the fee is accrued; the neighbor three years later subdivided his, but not yet feasible for undergrounding, paid fees. Another neighbor later subdivides, money paid in. Then the City decided it was time to underground and it could be done now in a more cost effective manner. Supposing Farmington was to be undergrounded and no money was paid in for utilities. Political winds might take that money that had been paid in and use it on Farmington.

Mr. Naemura asked if it seemed like #1 and #2 were almost stating the same objective, or were they intending to reach different situations? Ms. Jackson explained the reason that they put the text that way was to differentiate between an undergrounding component of a larger street construction project, whether it was a road improvement project or maybe a sewer project, that would open up the street to allow other things to happen to it; versus just the time being right from an aesthetic standpoint or some other issue to just go in to a street and underground its utilities. Item #1 would be the case where it was tied to a sewer project or a road project, or some other CIP type activity.

Chairman Maks stated to Commissioner Wolch that #3 met what he was after with regard to the money that was paid in, being set aside for that same area, until such time when undergrounding would be feasible. The money was not to go to any other area that had not set aside any money. The City would not use it.

Commissioner Kirby questioned the use of the term, "encumbered" for clarification.

Mr. Sparks suggested the use of "road" or "utility projects, in one area that ...and that had not accrued fees, shall not jeopardize...". The intent was to identify two different areas and the one area had already paid some fees.

Commissioner Kirby asked if these funds were actually targeted or set aside, encumbered? Had this physically been done? Chairman Maks explained that in the first draft, the fees were just going to into a pot and the pot was going to go through the CIP process, which could possibly apply the funds to a neighborhood who hadn't paid anything into the pot. Mr. Sparks stated that those people on that street having paid the money, only encumbered those dollars to an area, not a street, if it was encumbered at all.

Commissioner Wolch stated that what he was reading here, was that projects where there hadn't been fees collected, but it made sense to underground it, they had the go to go ahead and do it. He added that it began with the first part, "...that are conducive for relocation of wire utilities...". And where it went on to state, "...in situations where fees have been collected within a specific corridor...", that was where the meaning would get lost. Chairman Maks suggested, "other relocation utility projects that have not accrued fees, shall not jeopardize the opportunity for underground location in situations where...". He stated to use this revision, drop the conducive part and then begin, "Relocation utility projects, that have not accrued fees, shall not jeopardize the opportunity for underground relocations in situations where fees have been collected within a specific corridor, in a project in that corridor, as identified within the CIP."

Commissioner Heckman asked how to relate this specific project to those within this specific corridor, or would be, " projects within this specific corridor that are conducive for this work, but has not accrued fees...". The word, corridor, was his concern. Chairman Maks noted that this was both subjective and discretionary but it was an improvement over

the way it was before. He also stated that it first had to be identified on the CIP, which was in some fashion identifying a corridor right there.

Ms. Jackson commented that there could be several projects on the CIP, 4 or 5 undergrounding projects, some of which were not funded through this mechanism, but were still on the CIP.

Chairman Maks asked if everyone was satisfied with the added language. It was to be revised as follows: "Relocation utility projects, that have not accrued fees, shall not jeopardize the opportunity for underground relocations in situations where fees have been collected within a specific corridor, in a project in that corridor, as identified within the CIP."

Commissioner Johansen for clarification, stated that this may not be the funding source for that cost. Mr. Naemura added that that would be the Council looking at its CIP and its sublist in the CIP.

Chairman Maks stated it would be sort of guiding their decision making process with regard to that.

Commissioner Wolch asked if the money were going to be tied to a specific property or area, would that be something the City could keep track of. Mr. Sparks responded that as money comes in, it becomes part of the accounting process. They can track "X" amount of dollars received from "Y" property (tax lot).

Commissioner Voytilla was primarily concerned about how this would actually be accounted for. He gave the example in other jurisdictions, when fees were taken in and maybe a year later, when a project was going in, the person asked to be shown that the money he paid in actually went to that project or didn't, the City could not. He asked if the City had that kind of mechanism. Mr. Sparks replied that the City has a number of mechanisms that can be used, certainly in the accounting programs. They have been using GIS quite extensively to track waivers of remonstrance, and other things that are out there. But to answer a person whether or not they've used his $15,000.00, could not be answered Basically there was one revenue account and one expenditure account with a number of divisions within.

Commissioner Voytilla questioned the representation where they were identifying corridors for improvement; the right-of-way issues versus a project. How would the City justify if a project were paying a fee, that it would not be going for something unspecified in that corridor that they would have otherwise been required to improve, such as undergrounding in front of that property?

Chairman Maks restated that again, this would have to be identified on the CIP. Commissioner Voytilla agreed but stated that it would almost have to take another step

which would be to somehow district where these projects would anticipate collecting fees to pay for that CIP improvement. Chairman Maks stated that he was not uncomfortable with City Council, the policy makers, identifying what the corridor was. His concern was more with how they were going to prioritize; i.e. what projects would be done when, by the fee collection process. The issue of trying to narrow the corridor was discretionary and it was in Council's hands through the CIP process.

Commissioner Voytilla stated that he was having trouble with the corridor versus a larger project and what would be the benefiting area. He gave the example of a piece of property coming in with an application, they pay the in lieu fee which would be put into an account. Someone would then be making a decision -- that property might not be on this corridor, but because there was a CIP project here, the funds are going to be taken and applied to it, when that time comes. He stated that there were a number of CIP projects in the City. How do they identify where the money goes? Chairman Maks responded they had on the list for CIP projects, undergrounding utilities on Davies, undergrounding utilities on Hart, Lombard, etc. The key, was however, if Lombard hadn't paid anything and Hart had a few of these fees in lieu of; and Davies has had 18 properties that have paid in lieu fees, the Council, in their decision-making process, would prioritize based on and/or not be able to use the utility monies in the fund, to do Lombard who hadn't paid any fees.

Mr. Sparks commented that Commissioner Voytilla might be describing a grid system over the City. Chairman Maks questioned if Commissioner Voytilla's concern was with the word, corridor, was it a street, a neighborhood, a district, or a utility project that would run along one of those streets?

Commissioner Wolch stated that that sounded like the simple way to define it, it was just the fronting property. Chairman Maks stated he did not like the district grid idea. The language suggested was "specific utility corridors", "specific road corridor", "fronting properties on a specific corridor", "where fees have been collected from fronting properties on a specific corridor..."; or fronting properties on a specific road corridor". Commissioner Heckman brought up the situation of the power transmission corridor being in the alley. No property would be fronting onto that corridor. He suggested the word, "abutting". The Commission agreed with the "abutting" terminology.

Mr. Sparks, read the revision as follows: "Utility relocation projects that have not accrued fees, shall not jeopardize the opportunity for undergrounding relocation in situations where fees have been collected from abutting properties on a specific utility corridor, in a project in that corridor, as identified within the CIP."

It was noted that "utility" should go in front of corridors on 1 and 2 also.

Commissioner Voytilla asked if there was any time period that would need to be adhered to when someone paid in lieu of? It was Mr. Spark's understanding that state statute does not specify a "use it or lose it" situation.

Commissioner Voytilla, in 60.55.40, Negotiation, questioned what comprised the total project as discussed earlier with Commissioner Heckman. He asked if it was the total structure, complete build-out? Mr. Sparks responded it was the complete build-out. Commissioner Voytilla was very concerned about this as the figure could include engineering fees, development fee, building permits, cost of financing. Mr. Sparks stated that in his prior jurisdiction, it only included the cost of doing the project specifically effecting the ground which would include materials, labor. Commissioner Voytilla stated then it would be the residential structure in the case of a subdivision of homes.

Mr. Sparks stated that landscaping would also have been included in this if were a developer cost. Commissioner Voytilla stated it did not say that there. He added that in the majority of the cases, it was the developers improving the subdivision and then got individual merchant builders building the lots. These were two separate entities.

Chairman Maks broke in at this point and asked for a general consensus about leaving the negotiation section in as there was already a discussion about getting rid of it, and/or changing the percentage.

Commissioner Voytilla commented that it was his feeling that something was needed because there was always the extraordinary circumstance or something unaccounted for. He gave the example of the optic vault that he encountered on a project. They were very expensive, and it did not benefit the project, but it had to be moved. There had to be discussion. He stated negotiation was a valid thing to have. Chairman Maks again asked if they wanted to leave it, they could always negotiate in some fashion?

Commissioner Heckman was also concerned about the times when things enter into a project that would not normally be a developer cost. The negotiation section was to be left in.

Ms. Jackson addressed one comment by Commissioner Voytilla, the concept of a subdivision where one person would come in and do the subdivision, and another group of different kinds of builders would come in and finish. She stated that it was necessary to remember back to the context of when this ordinance would come into application, and it was small projects. Anything that was a 100 lot subdivision or larger, would not meet the definitions whereby staff would tell them to pay an in lieu of fee. A true large subdivision would end up not meeting the criteria that were stated in the section 60.55.25, page 3 of 9. A large development was not going to hit any of those criteria, so they would be negotiating under the greater City allowance of the City Engineer's discretion to negotiate, not negotiating under the context of this ordinance.

Chairman Maks directed Commissioner Voytilla then to continue with his comments on the negotiation section. He stated he still had a problem with the magnitude of what the total

development cost could be construed as. He would either want to see this specifically defined or some form of limitations placed on it as to what the scope of that might be.

Mr. Sparks responded that defining estimated construction cost was something that would require additional work. Commissioner Voytilla suggested that it could be something simply limited to asking what were those bondable public improvements. It was necessary to come up with some number to determine the value for permanent purposes, dedication purposes; i.e. dedicating water improvements that have been put together. These numbers, he noted, were fairly public and could be adequate. That would include streets, sanitary, storm. Mr. Sparks stated that these items he would phrase as site development costs, instead of the more expansive term of construction costs. If that were the desire to narrow the scope to that type of improvement; i.e., putting down the road, any kind of other utilities -- gas, water, sewer, curb, gutter, storm water retention, the actual preparation of the site, getting it ready for development, then that would be one solution.

Commissioner Heckman commented that when he asked that question initially it was his original thought that the estimated construction costs of total development would be the developer's cost of getting the sites ready, not having the completed structures on the site. Chairman Maks said it was necessary to determine what it is because they were two completely different numbers and one would be easier to hit 15% of as opposed to the other. Mr. Sparks stated that the costs of the projects that Mr. Duggan reviewed were for the entirety, all the way through, including landscaping. He added that some design review projects would not require any site prep work other than possibly clearing a piece of ground to put in a foundation.

Chairman Maks asked if this section were gone, 60.55.40, was there any other place in the code that would accomodate extraordinary circumstances? Could a variance be gotten for it? Mr. Sparks stated that that was what they would suggest as a replacement for this section so as to provide some sort of out, which would be like an adjustment for a variance or something. Chairman Maks reasoned that because this was only for special specific situations and if they needed an out, and it was so rare and they did not want it to occur very often, then why were they putting together this hard verbiage as to what development costs were, construction costs, percentages, etc. He stated a variance could be the possible solution, even though they were hard to hit. But this did hit what the variance requirements were, it's not done of their own will.
In meeting the five criteria, he stated, the variance came the closest.

Commissioner Voytilla stated his concern here was the extraordinary situations that would possibly be borne out in a preapplication conference or Facilities Review. Why burden the applicant with the variance process, the time, money and effort when it would probably be granted to them? He questioned the possibility of a discussion, a healthy review and understanding with staff, staff having the discretion in this? Mr. Sparks stated that the City Engineer presently has some authority to negotiate. He added that he was cautious to recommend at this point that they go forward with some language that would say the

Engineer has some sort of discretion. The point of what they were doing here was to state certainties; i.e. you do have the ability to negotiate and here are the ground rules for negotiation. He stated that if the section was going to remain a part of the text, then it would be necessary to spell out specifics in what is being intended in terms of these costs and who would have that authority.

Commissioner Heckman asked if this language came from some other jurisdiction that has already used it or was it developed locally? Ms. Jackson answered that at this point, it was somewhat of a mish-mash of language that was taken from other jurisdictions' fee language. Commissioner Heckman asked if this process was in use then somewhere else? Ms. Jackson answered it was, in some form with the percentages being different, and some of the definitions of complex utility.

Getting back to the estimated construction costs, Commissioner Heckman asked, that in the jurisdictions where it was being used, how was it defined? Ms. Jackson responded that a fee is charged in the design review process, the building permit process, based on the cost of site prep, paving, landscaping, and the estimated construction costs of the structure/s that would be going on that site. This fee was a dollar figure that was used for estimating all the over permitting fees that go into that property. Commissioner Heckman gave the example of having a 10 lot subdivision, putting up 10 of the more expensive homes, he stated he would never get up to that 15% of the total cost with these 10 homes. However, if he were to put in 10 homes in the market range of $130,000.00, then he might easily achieve that 15%. Ms. Jackson concurred with this example so far. But Commissioner Heckman then stated that he did not see the application of this thing as being universal, there were too many holes. However, he did state that site preparation, getting the dirt ready to sell, is where the line should be drawn.

Ms. Jackson offered the explanation of having $20,000.00 for a particular site. It was a lot easier to pass that cost on when building more expensive homes that it would be if a person were building low income housing or low market rate kind of housing. One of the reasons for setting it to include the cost of the structures was to allow that fee to be passed on to the tenants or purchasers. Commissioner Heckman agreed that something was needed here, but was uncertain if this was it.

Chairman Maks at this point asked staff to come back with a couple of different options under the negotiation section and their thoughts on the variance procedure.

Commissioner Kirby, with regard to Ms. Jackson's statements, that as a part of the application process, the applicant must estimate some of the costs of the project as he would proceed in through the pre-application and into formal application, etc. He suggested tying this into the operational procedures they already had and then make reference back to the application total cost. It was a matter of attaching it back to a particular form. Ms. Jackson stated that that was basically the intent, there was a project cost fee that was used for calculating all kinds of other fees and it was to try to take that

unit and say if the utility undergrounding was 15% of that unit, you would have grounds to negotiate.

Chairman Maks, however, reasoned that what had been planned in the application process was not always what would happen, especially if the project were sold to someone else who would do something different than was allowed within that zone.

Mr. Sparks for clarification, stated they did not base their development review fees on the evaluation of a project. They have set fees.

Chairman Maks asked Mr. Sparks to return with some options, and address the variance issue, and possibly an administrative variance.

Mr. Sparks asked about creating some sort of process, a framework which would identify who made the decisions, how they made the decision, the appeal rights, notice requirements, the whole thing and bring this back. Chairman Maks stated that the bottom line in this was that it was discretionary, development costs, percentages, etc. He left it to Mr. Sparks if he wanted to start out with something that could be appealed, or just making it a Type 3.

Commissioner Voytilla commented that he appreciated the wording in the intersection portion. Commissioner Heckman thanked the staff for their patience with the Commission.

Chairman Maks opened the meeting for public testimony.

PUBLIC TESTIMONY

MR. JACK FRANKLIN, 5025 SW Fairmont Drive, Beaverton, addressed the Commission. He stated he had made his living in utility for almost 30 years and felt he could answer many questions, in particular Commissioner Heckman's concern about possibly having to move major switching boxes or vaults, etc. He stated it was his understanding that this amendment was primarily dealing with one or two lots, one or two houses, subdivisions on existing lots, etc. where the streets were in place, everything else was in place. It ranged from building a granny flat to subdividing a 10,000 square foot lot, 22,000 square foot lot.

He addressed page 2 of 9, item 6, where Commissioner Heckman raised the concern the word "convert". Mr. Franklin suggested the wording, "rearrange", because converting meant moving from one medium to another medium, moving from overhead to underground, where "rearrange" would cover all of those items plus distribution pedestals for telephone, etc.

Mr. Franklin stated that where there was no street required, the amendment was satisfactory. However, when the street improvement was required with the development

project, then he suggested that it be written into the amendment that the developer be required to install conduit under the driveway portion, property line to property line, to handle the probable utility requirements for future use.

Regarding what determined the formula for the negotiated settlement, Mr. Franklin stated that 15% could be a prohibitive number depending how large a unit was being talked about. He gave the example of one prospective development where a person had a one acre lot on SW 141st. He wanted to knock down the house and build 10 condos or 10 units for sale. Price would be in the range of $150,000 each. That would total $1,500.000.00; 15% would equal roughly $225,000.00. Mr. Franklin was certain that this developer would underground the utilities on that property for the 150 feet frontage he had before he would spend $225,000.00 putting it into a kitty. Even though there was nothing there except for existing overhead power lines. It would not cost him anywhere near that kind of money to underground.

Mr. Franklin suggested that with the perimeters, for a project being on a street that would require no improvements (other that a cut for a driveway to the new lot), that a per foot price be set, property line to property line, that this set number of dollars be thrown in the kitty for future use. For example if the lot was 150 feet wide, he was using 50 feet, at $80.00 per foot, the developer would put $4000.00 into the fund to cover future undergrounding of the utilities. This amount was only an example.

Where there were street improvements, Mr. Franklin's suggestion was to require the pipe be placed or actually underground the utilities.

Concerning the disbursement of the funds, it was his personal opinion that the funds which were collected should be dedicated at future improvements only on that street when the street would be rebuilt or when enough properties along that street were upgraded to the point on the street being required to be rebuilt. He noted that major power distribution boxes, cabinets, utility vaults, etc., usually were placed at road intersections where they feed off in a star pattern; they would bring a main cable into the distribution box. There were thousands of wires involved. He stated it would take a lot of money to rearrange a box of that nature, to pick it up and move it. He knew of no place in Beaverton where a box of that nature sat on a property line or in the middle of a property line because it was something that just wasn't done. Power, cable TV, likewise. He stated that if there was anything in the middle of a block, it would be hanging on a pole. To move a pole was also a major expense.

In conclusion, Mr. Franklin stated these were his major concerns and he had offered information that would help to qualify what this amendment would apply to. He added that he did not see this amendment applying to an 80 lot subdivision or something of that nature. It was just not feasible.

Chairman Maks asked regarding the distribution boxes, as Washington County was being annexed, would the same hold true in the County, as to placement? Mr. Franklin, answered that were the City to find a major distribution box, it would be alongside of an existing road. If there were five acres of land wanting to be developed alongside that same road, he felt this would be outside the scope he believed this amendment was intended to address. He stated that this would need to be clearly defined in the amendment as it was written.

Mr. Franklin also made that comment at this time that fiber optics cabling, at this time, was basically a point-to-point system for the telephone companies. It handled extremely high volume of information. It was not a distribution type cable going to residential services. So a fiber optic cable would go from the telephone central office, out to their sub-offices (such as the one on Green Way). That cable would be continuous from point-to-point.

Commissioner Heckman questioned if it was Mr. Franklin's intentions, in his earlier comments, that if a new lot were created that involved a driveway or any paved surface, would he at that time, say that the conduit must be placed under the driveway, even with just the creation of a flag lot? Commissioner Heckman stated that it would seem to him that anytime a driveway was going to be put in, or something was going to be poured (asphalt or concrete), that the conduit should be placed underneath to handle any further needs. Mr. Franklin agreed with both comments.

Commissioner Voytilla, regarding Mr. Franklin's preference that monies generated for a street should stay within that street, questioned the circumstance of a property developing off a main corridor (example given of Hart Road). Commissioner Voytilla sited the example of 155th, north of Hart, where some homes were built and asked why would he object to using money off 155th on Hart. Mr. Franklin stated that his concern was for some kind of guarantee that the money, as Chairman Maks had indicated earlier, stayed in the area where it had been so designated.

Commissioner Voytilla asked, regarding a flag lot with a concrete driveway approach, has there been a set conduit size and quantity that will service that area universally? Mr. Franklin responded yes, as they were talking about neighborhoods, not access onto TV Highway, etc. He stated one
conduit would handle three phase power for distribution in a neighborhood; a two inch cable was usually sufficient for fiber optic cable, cable TV, telephone.

Mr. Sparks made the comment regarding an existing power line running down a street and putting a conduit in a driveway, that that presupposed the City even knowing where they wanted to put the utilities; the right or left side of the road. There would have to exist a known utility easement right-of-way. In support of Mr. Franklin's statement, Chairman Maks stated the City could make certain the fee that is paid in lieu of, covered that. He stated that that would be getting to both sides of what he wanted covered.

Mr. Franklin stated that it was his understanding that was going to effect primarily existing neighborhoods where there was existing power line right-of-ways, or corridors. Obviously, if the house being developed was on the opposite of the street from where the utilities are coming down the street, then there would be the fee in lieu of, replacing the conduit. He also stated that any type flag lot, etc., would certainly be required to be undergrounded from the utility pole or vault, to that building.

Chairman Maks stated the fee schedule was not within their purview, but the negotiation price-what-formula concept from Mr. Franklin was interesting.

Commissioner Heckman MOVED and Commissioner Kirby SECONDED a motion that TA99-00009 The Legislative Development Code Text Amendment, be continued until December 1, 1999.

The question was called and the motion CARRIED unanimously.

Mr. Sparks stated the Commission would receive another Staff Report and revised text based on this discussion.

INTERMISSION: 8:48 p.m.

RECONVENED: 8:55 p.m. Commissioner Kirby was excused.

NEW BUSINESS

WORK SESSION:

A. **ROAD CLOSURE POLICY IMPLEMENTING AMENDMENT TO THE BEAVERTON CODE**

The Staff Report was presented by Margaret Middleton, Transportation Planner. She stated the purpose of the amendment was that it be codified and added to the City of Beaverton Code. The Traffic Commission had developed a policy on road closures that was approved by City Council on November 3, 1997. There was a process defined; criteria was established, but there were certain issues not addressed.

Ms. Middleton noted a number of corrections to the text:

Attachment B, letter A., the policy did not belong in the code; the paragraph "Policy" is to be deleted.

Under Eligibility Criteria, letter D., number 1., the text was revised to read: "The response form shall provide for respondent(s) to indicate whether the respondent favors or opposes the..."

Chairman Maks, page 2, D. (Survey), questioned the use of the term "neighborhood users of the street". Ms. Middleton answered this was defined in C. 2. on page 1. Chairman Maks had concerns about participants in the survey and gave the example of the neighborhood of Belair Street and Clifford. There were still questions regarding who would be classified as neighborhood users, taking into consideration when one part of a street was closed off, traffic moved to another. Crestmoor was an example. Chairman Maks stated that after doing the survey and it was determined that any adjoining streets would increase by 7%, he concluded that these people should have some say in the closing, the key being the change in the traffic flow. There would need to be a percentage trigger.

Chairman Maks, page 2, D. (Survey) where the text read, "...shall be conducted by the City to verify the ...from neighborhood users of the street." He stated it should be "abutting streets, adjacent streets, nearby streets", that would be receiving a blank percentage increase due to this change. It would be up to the City to come up with the threshold.

Ms. Middleton asked that in essence is Chairman Maks defining "substantial"? She stated she would see what they could come up with.

Commissioner Wolch questioned the one vote per residential unit, and offered the situation of the husband and wife who didn't agree and the first one who received the survey, turned in their vote. He stated that it would be cleaner to property owners and have one vote per owner. Ms. Middleton stated they took this section and these phrases from the traffic calming program procedures to use as a base. Commissioner Wolch asked what would happen if the tenant wanted a closure but the property owner would not. Ms. Middleton stated they would cancel each other out. Commissioner Wolch asked if in fact they each got a vote and said it seemed like the first person to respond essentially took the vote. Ms. Middleton stated they would both get surveys. From the information, the City wanted to understand whether the property owner would perceive a benefit or disbenefit; but they also wanted to be responsive to the resident.

Chairman Maks asked where an apartment building would fall in. Commissioner Heckman stated that one person would respond representing the tenants of the unit. Ms. Middleton stated these were tough things that have been addressed before in the calming program and worked well thus far.

Commissioner Wolch stated this brought up the 155th issue and questions regarding the process.

Commissioner Voytilla reported on a parallel situation concerning renters versus property owners or more than one property owner (husband and wife). He made the distinction between renter or title holder so as to weigh out their comments. He also stated that it was

objectionable to the home owner association when both husband and wife (more than one property owner) each had a vote as the single property owner was virtually out voted.

Chairman Maks stated he tended to agree with both these statements. He preferred property owner because it was simpler, clean, was one vote. Commissioner Voytilla, like staff, stated it was important to have the input from both. He stated the distinction would be made on the survey form by indicating the appropriate response with regard to owner or renter. They could be color coded. Chairman Maks pointed out that he could indicate he was something else. Commissioner Voytilla asked if these were not going to be checked against the tax records. Chairman Maks stated that if it were only mailed to property owners of record on the tax lots, there would be nothing to worry about. Commissioner Heckman asked how a list of all the tenants in an apartment building would be obtained. Chairman Maks responded that that was just a general mailing. Ms. Middleton stated that the traffic department does sometimes go out to the apartment building and distributes them one by one.

Commissioner Johansen stated, as a reminder, the Traffic Commission has been through this for years; Council has been through this once or twice. He stated this was a work in progress once it was approved. Also, it has been reviewed quite extensively through the City.

Commissioner Heckman asked staff how many requests for street closure has occurred in the last four years. Ms. Middleton answered she did not know.

Commissioner Heckman stated that that was his point, were they working on something that was moot.

Chairman Maks stated he was not sure that was true, there have been street closure requests and directed the question to Commissioner Johansen. He stated Transportation possibly got two or three a month. Commissioner Heckman asked how many have actually been closed? Chairman Maks answered none; but stated this was what was done when requested. There have been none through a process, and this was to be the process.

Commissioner Dunham asked if there was a cost that went with a request? Commissioner Johansen recalled the discussion but was uncertain as to the conclusion.

Commissioner Voytilla was also curious about the fees and how often this had occurred. He questioned that assuming this went through, what would be the next step? Who would be responsible for the maintenance of the closure? Ms. Middleton answered they would just blockade the street.

Commissioner Voytilla questioned that this was about closing through traffic totally, not an entire segment of a street. He asked about posting. Ms. Middleton stated this would be by the use of signs. They would also be checking with the MUTCD and the City

Engineering Design Manual to determine what signage would be necessary if it were to go through. Commissioner Voytilla asked about simply notifying the general public that the City was contemplating a closure. Ms. Middleton stated that that goes through a public hearing on the traffic issues process. Commissioner Voytilla asked where this would fall within this procedure and survey? Ms. Middleton answered this was a subsection of a full code section. It would be under Major Issues. Commissioner Voytilla asked if that would include comments then after the 120 day period, or test period? Ms. Middleton stated only after the closure proved to be effective, or was in the best interest and that it satisfied all the criteria, it would go through a process that would entail a public hearing at the Traffic Commission. It would end up at Council for a decision. It would be noticed; there was opportunity for appeal.

Commissioner Voytilla reiterated the importance for the property owner to be involved. He stated this would also affect business complexes and tenants.

Commissioner Heckman, asked on Attachment B, page 2, D., 1.; the text stated, "...and a neutral list of arguments for and against the proposed road closure."; was that really needed? Ms. Middleton responded that that came straight from the policy which was Attachment A. Council asked that that be included with the survey.

Commissioner Dunham, page 2, E. Test Period: questioned "seasonable", within a 120 day range, may not be applicable? She suggested adding the words, "if applicable". She gave the example of closing a road during the summer, but some other part of the year would experience more of a peak traffic volume. Ms. Middleton stated they could add "seasonal peaks as appropriate". Chairman Maks agreed with that. Ms. Middleton stated they were leaving it up to the City Traffic Engineer to identify the test period that reflected these peak volumes.

Commissioner Dunham also stated she was getting a little confused between Attachment A and Attachment B as they pertained to the surveys and noticing people. In Attachment A, it referred to the Development Code, Section 130 which has been changed to 50.30, for the quasi-judicial procedures. Her question was, did that mean when you got the survey in Attachment B, Section D., where it stated the survey area was determined by the City Engineer, and the definition of neighborhood user, that that no longer was driven by the quasi-judicial 500 foot noticing. Ms. Middleton stated that that was in the Development Code and this is a Beaverton Code amendment. In drafting the various text amendments, the City Attorney had pointed out to her that they did not want to duplicate processes. Ms. Middleton stated that this was actually a subset of eligibility criteria and a subset of a process already identified. What was being seen in Attachment A (dated November, 1997) was the implementing of amendments to the policy as defined and directed by Council. What had happened in the interim, this process was developed and it was appropriate to being included in the Beaverton Code. It was within the City Attorney's judgment area to do that, so additional eligibility criteria, the test period and the survey were attached.

Commissioner Dunham asked if there was any benefit to noticing the NAC, or involving the NACs in any way where a road closure would occur in a particular NAC, and whether that NAC would have any kind of notification of the proposed road closure? Ms. Middleton stated she could check on the traffic issues process as they routinely notice the NACs on so many things; she would double check that.

Chairman Maks asked if there were further questions and received no requests. Ms. Middleton stated they would continue to coordinate with the City Attorney's office on this. There was a public hearing scheduled January 5, 2000, Measure 56 notice was determined to be necessary.

APPROVAL OF MINUTES

Commissioner Heckman MOVED and Commissioner Dunham SECONDED a motion to approve of the minutes of August 18, 1999, as amended.

The question was called and the motion CARRIED unanimously.

Meeting was **ADJOURNED** at 9:35 p.m.